



DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 1216

[Document Number AMS-FV-13-0042]

**Peanut Promotion, Research, and Information Order;
Amendment to Primary Peanut-Producing States and Adjustment
of Membership**

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This rule adds the State of Arkansas as a primary peanut-producing State under the Peanut Promotion, Research, and Information Order (Order). The Order is administered by the National Peanut Board (Board) with oversight by the U.S. Department of Agriculture (USDA). This rule also adds a seat on the Board for the State of Arkansas. Under the Order, primary peanut-producing States must maintain a 3-year average production of at least 10,000 tons of peanuts. Arkansas's peanut production meets this requirement. Primary peanut-producing States also have a seat on the Board. This action was recommended by the Board and ensures that the Board's representation reflects changes in the geographical distribution of the production of peanuts.

DATES: Effective: [INSERT DATE 1 DAY AFTER THE DATE OF PUBLICATION IN THE FEDERAL REGISTER].

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SUPPLEMENTARY INFORMATION: This rule is issued under the
Order (7 CFR part 1216). The Order is authorized under the
Commodity Promotion, Research, and Information Act of 1996
(1996 Act) (7 U.S.C. 7411-7425).

Executive Order 12866 and Executive Order 13563

Executive Orders 12866 and 13563 direct agencies to
assess all costs and benefits of available regulatory
alternatives and, if regulation is necessary, to select
regulatory approaches that maximize net benefits (including
potential economic, environmental, public health and safety
effects, distributive impacts and equity). Executive Order
13563 emphasizes the importance of quantifying both costs
and benefits, reducing costs, harmonizing rules and
promoting flexibility. This action has been designated as
a "non-significant regulatory action" under section 3(f) of

Executive Order 12866. Accordingly, the Office of Management and Budget (OMB) has waived the review process.

Executive Order 13175

This action has been reviewed in accordance with the requirements of Executive Order 13175, Consultation and Coordination with Indian Tribal Governments. The review reveals that this regulation will not have substantial and direct effects on Tribal governments and will not have significant Tribal implications.

Executive Order 12988

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. It is not intended to have retroactive effect. Section 524 of the 1996 Act provides that it shall not affect or preempt any other Federal or State law authorizing promotion or research relating to an agricultural commodity.

Under section 519 of the 1996 Act, a person subject to an order may file a written petition with USDA stating that an order, any provision of an order, or any obligation imposed in connection with an order, is not established in accordance with the law, and request a modification of an order or an exemption from an order. Any petition filed challenging an order, any provision of an order, or any obligation imposed in connection with an order, shall be

filed within two years after the effective date of an order, provision, or obligation subject to challenge in the petition. The petitioner will have the opportunity for a hearing on the petition. Thereafter, USDA will issue a ruling on the petition. The 1996 Act provides that the district court of the United States for any district in which the petitioner resides or conducts business shall have the jurisdiction to review a final ruling on the petition, if the petitioner files a complaint for that purpose not later than 20 days after the date of the entry of USDA's final ruling.

Background

This rule adds the State of Arkansas as a primary peanut-producing State under the Order. The Order is administered by the Board with oversight by USDA. This rule also adds a seat on the Board for the State of Arkansas. Under the Order, primary peanut-producing States must maintain a 3-year average production of at least 10,000 tons of peanuts. Arkansas's peanut production meets this requirement. Primary peanut-producing States also have a seat on the Board. This action ensures that the Board's representation reflects changes in the geographical distribution of the production of peanuts covered under the Order.

The Order became effective on July 30, 1999. Under the Order, the Board administers a nationally-coordinated program of promotion, research, and information designed to strengthen the position of peanuts in the market place and to develop, maintain, and expand the demand for peanuts in the United States. Under the program, all peanut producers pay an assessment of one percent of the total value of all farmers' stock peanuts. The assessments are remitted to the Board by handlers and, for peanuts under loan, by the Commodity Credit Corporation.

The Order distinguishes between the terms "minor peanut-producing states" and "primary peanut-producing states" for purposes of Board representation and voting at meetings. Section 1216.21 defines primary peanut-producing States as Alabama, Florida, Georgia, Mississippi, New Mexico, North Carolina, Oklahoma, South Carolina, Texas and Virginia. These States must maintain a 3-year average production of at least 10,000 tons of peanuts. All other peanut-producing States are defined as minor peanut-producing States, pursuant to section 1217.15.

As specified in section 1216.40(a), the Board is composed of 11 producer members and their alternates: one member and alternate from each primary peanut-producing State, and one at-large member and alternate collectively

from the minor peanut-producing States. The members and alternates are nominated by producers or producer groups.

Pursuant to section 1216.40(b) of the Order, at least once in each five-year period, the Board must review the geographical distribution of peanuts in the United States and make a recommendation to the Secretary of Agriculture (Secretary) to continue without change or whether changes should be made in the number of representatives on the Board to reflect changes in the geographical distribution of the production of peanuts.

Board Recommendation

As required by the Order, the Board met on April 9-10, 2013, and reviewed the geographical distribution of peanuts. According to data from the USDA's Federal State Inspection Service, for the years 2010, 2011, and 2012, 1,357, 6,092, and 38,866 tons of peanuts were inspected in Arkansas, respectively. Based on this data, the 3-year average annual peanut production for Arkansas totals 15,438 tons per year (46,315 divided by 3) which exceeds the requirement set in the Order of maintaining a 3-year rolling average of 10,000 tons per year to become a major peanut-producing State. (Data from USDA's National Agricultural Statistics Service (NASS) was not available at the time of the Board's review because Arkansas had not

produced enough peanuts annually to be recorded. NASS plans to record peanut production for Arkansas in the near future.)

Based on Federal State Inspection Service data, the Board voted, with one member opposed, to add Arkansas as a primary peanut-producing State under the Order. The member opposed expressed concern that Arkansas did not produce 10,000 tons per year for three consecutive years, similar to when the Order was amended to add Mississippi as a primary peanut-producing State (73 FR 39214; July 9, 2008). However, the Order does not require that a State produce 10,000 tons per year for three consecutive years to be a primary peanut-producing State. The Order provides that a primary peanut-producing State shall maintain a three-year average production of at least 10,000 tons of peanuts (section 1216.21)

In addition, USDA's Federal State Inspection Service reports that 22,947 tons of peanuts were inspected in 2013. This indicates that Arkansas peanut production has maintained its production levels above 10,000 tons.

This action also adds a producer member and alternate on the Board from the State of Arkansas. Pursuant to section 1216.40(a), primary peanut-producing states have a seat on the Board.

These changes will help ensure that the Board's representation reflect changes in the geographical distribution of the production of peanuts. Accordingly, this rule amends sections 1216.15 and 1216.21 of the Order to classify the State of Arkansas as a primary peanut-producing State. This rule also revises sections 1216.40(a) and 1216.40 (a)(1) of the Order to specify that the Board will be composed of 12 peanut producer members and their alternates rather than 11.

Final Regulatory Flexibility Act Analysis

In accordance with the Regulatory Flexibility Act (RFA) (5 U.S.C. 601-612), AMS is required to examine the impact of this rule on small entities. Accordingly, AMS has considered the economic impact of this action on small entities.

The purpose of the RFA is to fit regulatory actions to the scale of businesses subject to such actions so that small businesses will not be disproportionately burdened. The Small Business Administration (SBA) defines small agricultural producers as those having annual receipts of no more than \$750,000 and small agricultural service firms (handlers) as those having annual receipts of no more than \$7.0 million (13 CFR § 121.201).

According to the Board, there were approximately 9,208 producers and 29 handlers of peanuts who were subject to the program in 2012.

Most producers would be classified as small businesses under the criteria established by the SBA. USDA's NASS reports that the farm value of the peanuts produced in the top 10 States in the years 2010, 2011, and 2012 was \$939 million, \$1.169 billion, and \$2.309 billion, respectively; the 3-year average crop value was \$1.472 billion. With a 2012 crop value of \$2.309 billion, average peanut sales per producer were approximately \$251,000. With a 2010-2012 average crop value of \$1.472 billion, average peanut sales per producer was approximately \$160,000.

The average peanut crop value per handler for 2010-2012 ranged from about \$32 million to \$80 million. This is many times larger than the \$7 million SBA threshold and is thus an indication that most of the handlers would not be classified as small businesses.

The quantity of U.S. peanut production from the 10 major peanut-producing States for 2010, 2011, and 2012 was 4.157 billion pounds, 3.659 billion pounds, and 6.741 billion pounds, respectively; the 3-year average crop quantity was 4.852 billion pounds. NASS reports that Georgia was the largest producer (48 percent of the 3-year

average quantity), followed by Alabama (13 percent), Florida (12 percent), Texas (9 percent), North Carolina (7 percent), South Carolina (6 percent), Mississippi (2 percent), Virginia (1 percent), Oklahoma (1 percent) and New Mexico (less than 1 percent). According to the 2007 Census of Agriculture, small amounts of peanuts were also grown in six other States.

If the number of peanut producers (9,208) is divided into the total U.S. production for 2012 (6.741 billion), the resulting average peanut production per producer is approximately 732,000 pounds. If divided by the 3-year average production for 2010-2012 (4.852 billion), the resulting average is approximately 527,000 pounds per producer.

This rule amends sections 1216.15 and 1216.21 of the Order to classify the State of Arkansas as a primary peanut-producing State. The Order is administered by the Board with oversight by USDA. This rule also amends section 1216.40(a)(1) to add a seat on the Board for the State of Arkansas. Under the Order, primary peanut-producing States must maintain a 3-year average production of at least 10,000 tons of peanuts. Arkansas's peanut production meets this requirement. Primary peanut-producing States also have a seat on the Board. This

action will ensure that the Board's representation reflects changes in the geographical distribution of the production of peanuts covered under the Order. This action is authorized under section 1216.40(b) of the Order and Section 515(b)(3) of the 1996 Act.

Regarding the economic impact of this rule on affected entities, this action imposes no costs on producers and handlers. This rule includes the State of Arkansas as a primary peanut-producing State based on recent production data and adds a seat on the Board for the State of Arkansas.

With regard to alternatives, the Board reviewed the peanut distribution for all the minor peanut-producing States, and determined that Arkansas was the only current minor State that met the Order's requirement for a 3-year average peanut production of at least 10,000 tons.

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the background form, which represents the information collection and recordkeeping requirements imposed by this rule, was previously approved under OMB control number 0505-0001.

Adding a producer member and alternate member representing the State of Arkansas for the Board means that four additional producers will be required to submit

background forms to USDA in order to be considered for appointment to the Board. Four producers will be affected because two names must be submitted to the Secretary for consideration for each position on the Board (two members and two alternates). The public reporting burden is estimated to increase by an average 0.5 hours per response for each of the four producers. This additional burden is included in the existing information collections approved for use under OMB control number 0505-0001. The estimated annual cost of providing the information by the four producers is \$66.00 or \$16.50 per producer. However, serving on the Board is optional, and the burden of submitting the background form will be offset by the benefits of serving on the Board.

As with all Federal promotion programs, reports and forms are periodically reviewed to reduce information requirements and duplication by industry and public sector agencies. Finally, USDA has not identified any relevant Federal rules that duplicate, overlap, or conflict with this rule.

AMS is committed to complying with the E-Government Act, to promote the use of the Internet and other information technologies to provide increased opportunities

for citizen access to Government information and services, and for other purposes.

In regards to outreach efforts, the Board discussed the state of Arkansas peanut production level at its November 27-30, 2012, meeting. The Board notified the major peanut-producing States (Georgia, Alabama, Florida, Texas, North Carolina, South Carolina, Mississippi, Virginia, Oklahoma, and New Mexico) of Arkansas's production numbers by disseminating information through the Board's weekly newsletter which is titled *News in a Nutshell*. The Board also sent out notification about Arkansas's increased production numbers to the peanut industry through its *Peanut Quarterly* newsletter. In addition, Arkansas's increased production numbers in the year 2012 to present date were widely published in trade publications. The Board met in April 2013 and recommended adding the State of Arkansas as a primary peanut-producing State. All of the Board's meetings where this issue was discussed were open to the public and interested persons were invited to participate and express their views.

A proposed rule concerning this action was published in the **Federal Register** on December 23, 2013 (78 FR 77368). The Board issued a press release about the proposed rule and sent it to the trade media, all known state peanut

organizations, and all Board members and alternates. The Board also included notifications about the proposal in its newsletters and on its website at nationalpeanutboard.org. Finally, the proposal was made available through the Internet by USDA and the Office of the Federal Register. A 30-day comment period ending January 22, 2014, was provided to allow interested persons to submit comments.

Analysis of Comments

Fourteen comments were received in response to the proposed rule. Thirteen comments supported the proposal and one expressed concern about the peanut program and taxpayer dollars.

The comments supporting the proposal concurred that Arkansas meets the Order's requirement of having maintained a three-year average production of at least 10,000 tons of peanuts. Further, designating Arkansas as a primary peanut-producing State would ensure that the Board's representation reflect the geographical distribution of the production of peanuts.

One comment expressed concern about the peanut program and the use of taxpayer dollars. The national peanut promotion program is authorized under the 1996 Act and is funded through assessments paid by peanut producers. It does not receive taxpayer funds. The comment went on to

suggest that the proposed rule did not appear on regulations.gov. However, that is not the case. The proposed rule was made available on the website the day it was published in the **Federal Register**. As well, comments received on the proposed rule were posted to the website following posting of the rule. Accordingly, no changes have been made to the rule based on this comment.

After consideration of all relevant matters presented, including the information and recommendation submitted by the Board and other available information, it is hereby found that this rule, as hereinafter set forth, is consistent with and will effectuate the purposes of the 1996 Act.

It is further found that good cause exists for not postponing the effective date of this rule until 30 days after publication in the **Federal Register** (5 U.S.C. 553) because this action should be in effect as soon as possible so that the changes may be implemented for the next nomination process which begins in the spring of 2014. Additionally, a 30-day comment period was provided for in the proposed rule, and the majority of comments supported the changes.

List of Subjects in 7 CFR Part 1216

Administrative practice and procedure, Advertising, Consumer information, Marketing agreements, Peanut promotion, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR Part 1216 is amended as follows:

PART 1216—PEANUT PROMOTION, RESEARCH, AND INFORMATION ORDER

1. The authority citation for 7 CFR part 1216 continues to read as follows:

Authority: 7 U.S.C. 7411-7425; 7 U.S.C. 7401.

2. Section 1216.15 is revised to read as follows:

§ 1216.15 Minor peanut-producing states.

Minor peanut-producing states means all peanut-producing states with the exception of Alabama, Arkansas, Florida, Georgia, Mississippi, New Mexico, North Carolina, Oklahoma, South Carolina, Texas, and Virginia.

3. Section 1216.21 is revised to read as follows:

§ 1216.21 Primary peanut-producing states.

Primary peanut-producing states means Alabama, Arkansas, Florida, Georgia, Mississippi, New Mexico, North Carolina, Oklahoma, South Carolina, Texas, and Virginia, Provided, these states maintain a 3-year average production of at least 10,000 tons of peanuts.

4. Section 1216.40, paragraph (a) introductory text and (a)(1) are revised to read as follows:

§ 1216.40 Establishment and membership.

(a) Establishment of a National Peanut Board. There is hereby established a National Peanut Board, hereinafter called the Board, composed of no more than 12 peanut producers and alternates, appointed by the Secretary from nominations as follows:

(1) Eleven members and alternates. One member and one alternate shall be appointed from each primary peanut-producing state, who are producers and whose nominations have been submitted by certified peanut producer organizations within a primary peanut-producing state.

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Dated: March 6, 2014

Rex A. Barnes
Associate Administrator

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